

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

W. A. SOKOLOWSKI,

Plaintiff,

vs.

SHELDON G. ADELSON, et al.,

Defendants.

Case No. 2:14-cv-0111-JCM-NJK

ORDER

Before the Court is Plaintiff's Motion for Extension of Time to Complete Service and for Leave to Complete Service by Publication. Docket No. 93. The Court finds this matter properly resolved without a hearing. *See* Local Rule 78-2. For the reasons discussed below, the Motion for Extension of Time to Complete Service is hereby **GRANTED**. For the reasons discussed below, the Motion for Leave to Complete Service by Publication is hereby **GRANTED** in part and **DENIED** without prejudice in part.

I. BACKGROUND

Plaintiff filed his Complaint in this Court on January 23, 2014. Docket No. 1. Plaintiff initially sent waivers of service to each of the individual named Defendants, which were not returned.¹ Docket No. 93, at 4. Some months later, Plaintiff succeeded in effectuating service as

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Defendant Frederick Hipwell and LVS each appeared and filed respective motions to dismiss. Docket Nos. 14, 21. While a moot point, it is unclear from Plaintiff's Motion whether these two Defendants returned Plaintiff's proffered waiver of service.

1 against Defendants Leven, Chaltiel, Chafetz, Forman, Ader, and Koppelman. Docket Nos. 79, 80,
 2 81 82, 87, 88. Conversely, Plaintiff submits that he has been unsuccessful in his attempts to serve
 3 Defendants George P. Koo, Jeffrey H. Schwartz, Irwin A. Siegel, and Adelson. Docket Nos. 85, 86,
 4 90, and 93, at 4.

5 Plaintiff represents that his initial attempt to serve Adelson at the Venetian Hotel was
 6 rebuffed by the legal staff at the hotel, which refused to accept service.² Docket No. 93, at 5. He
 7 states that his follow-up attempt to serve Adelson at a speaking engagement at the hotel was
 8 similarly unsuccessful, as Plaintiff's process server was ordered off the premises by hotel security.
 9 *Id.*, at 6. With respect to Defendants Koo, Schwartz, and Siegel, Plaintiff submits that his attempts
 10 to serve each of these individuals at their respective residential addresses were not successful. *Id.*;
 11 *see also* Docket No. 94.

12 **II. DISCUSSION**

13 **A. Extending Service Period**

14 Rule 4(m) of the Federal Rules of Civil Procedure provides that a defendant must be served
 15 within 120 days after a complaint is filed. Fed. R. Civ. P. 4(m).³ The rule also provides that if
 16 service is not timely made, the Court "must dismiss the action without prejudice against that
 17 defendant or order that service be made within a specified time....If the plaintiff shows good cause
 18 for the failure, the court must extend the time for service for an appropriate period." *Id.* "As a
 19 general matter, a showing of good cause requires more than simple inadvertence, mistake of counsel,
 20 or ignorance of the Rules of Civil Procedure." *Nat'l Union Fire Ins. Co. of Pittsburgh, PA v.*
 21 *Monroe*, 2011 WL 383807, *1 (D. Nev. Feb. 2, 2011); *citing e.g., Martin v. Longbeach*, 246 F.3d
 22 674 (9th Cir. 2000); *McGuckin v. Smith*, 974 F.2d 1050 (9th Cir. 1992) (overruled on other grounds by
 23 *WMX Technologies, Inc. v. Miller*, 104 F.3d 1133 (9th Cir. 1997)). "At a minimum, good cause
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26 The Venetian Hotel is the physical address for LVS. Docket No. 93, at 5.

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28 Absent a Court-granted extension, Plaintiff was required to have completed service on all
 defendants by May 23, 2014, the filing date of the instant motion.

1 means excusable neglect.” *Martin*, 246 F.3d at 674.

2 Here, Plaintiff has diligently attempted to serve Defendant Adelson at his place of business.
3 Plaintiff has also undertaken good-faith efforts to serve Defendants Koo, Schwartz, and Siegel at
4 their last-known addresses. Docket No. 93, at 5; Docket No. 94. Though Plaintiff has been unable
5 to complete service of these four individuals, Plaintiff “requests that he be granted a 60-day
6 extension to continue his service efforts by traditional means.” Docket No. 93, at 7. Plaintiff notes
7 that each of the remaining non-served Defendants are either current directors or have an ongoing
8 business relationship with LVS, such that they are almost certainly aware of Plaintiff’s lawsuit. *Id.*,
9 at 8. Defendants will accordingly not be prejudiced by a minimal extension of time. Moreover,
10 Plaintiff has successfully completed service of six other individuals who previously did not return
11 Plaintiff’s proffered waivers of service, such that the Court is persuaded that Plaintiff should be
12 given the opportunity to serve the remaining four individuals identified in his Complaint. Therefore,
13 the Court finds that good cause exists to extend the time for service as to Defendants Adelson, Koo,
14 Schwartz, and Siegel. In light of the foregoing facts and Plaintiff’s efforts to serve these Defendants,
15 the Court grants Plaintiff’s request for an additional sixty (60) days to complete service.

16 **B. Service by Publication**

17 Rule 4(e)(1) of the Federal Rules of Civil Procedure provides for service upon individuals
18 who may be served “pursuant to the law of the state in which the district court is located, or in which
19 service is effected.” *Id.* In Nevada, Rule 4 of the Nevada Rules of Civil Procedure (“NRCPP”) governs service of parties under state law. *Nat’l Union Fire*, 2011 WL 383807, at *2. Parties are
20 required to personally serve a summons and the complaint upon defendants. *Id.* When personal
21 service proves impossible, however, NRCPP 4(e)(1)(i) provides that a party may move for service by
22 publication where the opposing party “resides out of the state, or has departed from the state, or
23 cannot, after due diligence be found within the state, or conceals himself to avoid the service of
24 summons.” *Id.*

26 “A party seeking service by publication must seek leave of court by filing an affidavit
27 demonstrating its due diligence in attempting to personally serve the defendant. There are several
28 key factors Nevada courts look to in evaluating a party’s due diligence in effecting service.” *Id.*

1 Nevada courts consider the number of attempts made by a plaintiff to serve a defendant at his or her
2 residence and other methods of locating defendants, such as consulting public directories and family
3 members. *Id.*; citing *Price v. Dunn*, 787 P.2d 785, 786-7 (Nev. 1990), *rev'd on other grounds*, *NC-*
4 *DSH, Inc. v. Garner*, 125 Nev. 647, 651 n.3 (2009); *Abreu v. Gilmer*, 985 P.2d 746 (Nev. 1999);
5 *McNair v. Rivera*, 874 P.2d 1240, 1241 (Nev. 1994). The basic rule is that all reasonable means of
6 locating and serving the defendant should be employed. *See Price*, 787 P.2d at 787. In *Abreu v.*
7 *Gilmer*, the Nevada Supreme Court clarified the due diligence inquiry, stating:

8 Despite our previous decisions on this issue, we note that there is no objective, formulaic
9 standard for determining what is, or is not, due diligence. The due diligence requirement
10 is not quantifiable by reference to the number of service attempts or inquiries into public
11 records. Instead, due diligence is measured by the qualitative efforts of a specific plaintiff
12 seeking to locate and serve a specific defendant. As the Utah Supreme Court recognized:

13 “The diligence to be pursued and shown . . . is that which is reasonable under the
14 circumstances and not all possible diligence which may be conceived. Nor is it that
15 diligence which stops just short of the place where if it were continued might reasonably
16 be expected to uncover an address . . . of the person on whom service is sought. . . . Due
17 diligence must be tailored to fit the circumstances of each case. It is that diligence which
18 is appropriate to accomplish the end sought and which is reasonably calculated to do so.”

19 *Abreu*, 985 P.2d at 749 (quoting *Parker v. Ross*, 217 P.2d 373, 379 (Utah 1950)).

20 Here, Plaintiff has attempted to serve Defendant Adelson at his place of business on only two
21 occasions, and offers no evidence of service attempts elsewhere. Docket No. 94, at 3, 6-9.

22 Additionally, Plaintiff has made four attempts to serve Defendant Schwartz at his last-known
23 address; however, Defendant did not appear to be at the residence on any of these occasions. *Id.*, at
24 3-4, 25-31. Plaintiff has attempted to serve Defendant Koo at his last-known address on only one
25 occasion, and was informed that Defendant no longer lives at that address. *Id.*, at 3, 17-23.

26 Plaintiff has attempted to serve Defendant Siegel at his last-known residence on four
27 occasions. *Id.*, at 3, 11-15. Plaintiff states that his process server confirmed Defendant lived in the
28 secured building at that address; Defendant refused to allow Plaintiff's process server access to his
unit; and Defendant refused to come to the lobby. *Id.*, at 15.

While it is apparent that Plaintiff has made a good faith effort to serve the remaining
Defendants, the showing of due diligence required by Nevada law for service by publication has not
been met given the failure of Plaintiff to attempt service on Defendants Adelson, Koo, and Schwarz

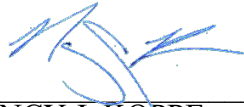
1 using other “reasonable means of locating and serving” these Defendants. *Abreu*, 985 P.2d at 749;
2 Docket No. 93, at 5-6; Docket No. 94.

3 **III. CONCLUSION**

4 Based on the foregoing,

5 IT IS HEREBY ORDERED that Plaintiff’s Motion for Extension of Time to Complete
6 Service is **GRANTED**. Plaintiff’s Motion for Leave to Complete Service by Publication is hereby
7 **GRANTED** in part and **DENIED** without prejudice in part. The Court grants Plaintiff’s motion as
8 to Defendant Siegel, and **DENIES** without prejudice Plaintiff’s motion as to Defendants Adelson,
9 Koo, and Schwarz.

10 DATED: May 28, 2014.

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14 NANCY J. KOPPE
15 United States Magistrate Judge
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